

FILED**JAN 07 2011**


Clerk

UNITED STATES DISTRICT COURT
 DISTRICT OF SOUTH DAKOTA
 CENTRAL DIVISION

UNITED STATES OF AMERICA,

* CR 10-30054-01-02-RAL

*

Plaintiff,

* ORDER ADOPTING REPORT

vs.

* AND RECOMMENDATION AND

FLOYD CLOWN, SR, and
 PTAN CLOWN,

* DENYING MOTION TO DISMISS

COUNT II

*

*

Defendants.

*

On November 22, 2010, Defendant Ptan Clown filed a Motion to Dismiss Count II of the Indictment as Multiplicitous (Doc. 42). Magistrate Judge Mark Moreno, on December 14, 2010, issued a Report and Recommendation (Doc. 49) for disposition of the motion, recommending that Clown's motion be denied.

Copies of the Report and Recommendation were served upon the parties as required by 28 U.S.C. § 636. In considering a magistrate judge's recommendation on a dispositive matter, such as a motion to suppress evidence, a district court must make a "de novo determination of those portions of the report or . . . recommendations to which objection is made." 28 U.S.C. § 636(b)(1). On December 20, 2010, Clown filed objections (Doc. 50) to the Report and Recommendation. This Court has conducted a de novo review of the record and agrees in full with the Report and Recommendation.¹ Therefore it is,

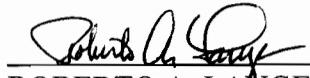
ORDERED that Defendant Ptan Clown's objections (Doc. 50) are overruled, the Report and

¹The Court notes that the first sentence of the "Factual Background" section of the Report and Recommendation should have included the words "conspiring to." That is, the first sentence of the "Factual Background" section should read, "Ptan and Floyd are charged as co-conspirators in Count I with having violated 21 U.S.C. §§ 841(a)(1) and 846 by conspiring to "knowingly and intentionally distribute and possess with intent to distribute marijuana, a Schedule I controlled substance."

Recommendation (Doc. 49) is adopted, and the motion to dismiss (Doc. 42) is denied.

Dated this 7th of January, 2011.

BY THE COURT:



ROBERTO A. LANGE
UNITED STATES DISTRICT JUDGE